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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 **OUR CHILDREN'S EARTH**
18 **FOUNDATION, a non-profit corporation,**

19 **Plaintiff,**

20 **v.**

21 **ANDREW R. WHEELER, in his official**
22 **capacity as the Administrator of the United**
23 **States Environmental Protection Agency,**

24 **Defendant.**

Case No. 4:20-cv-00396-JSW

JOINT STIPULATION AND
[PROPOSED] ORDER

Pursuant to Civil L.R. 6-1(b), Plaintiff Our Children's Earth Foundation ("Plaintiff") and Defendant Andrew R. Wheeler, in his official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), jointly hereby stipulate to and request that the Court enter an order continuing the briefing schedule and hearing on the cross-motions for summary judgment for this matter for ninety days. In support of this request, the parties state the following:

1. The parties previously advised the court that counsel had reached a tentative agreement on terms which resolve all issues remaining in this matter other than the claim for costs of litigation, including attorneys' fees, and memorialized that agreement into a draft proposed consent decree. The parties also stated that approval of any settlement on behalf of EPA requires review and approval by the appropriate officials at EPA and the Department of Justice ("DOJ") as well as compliance with the requirements of Clean Air Act ("CAA") section 113(g), 42 U.S.C. § 7413(g). Dkt. Nos. 25 & 27.

2. On September 14, 2020, the parties advised the Court that review and approval by the appropriate officials at EPA and DOJ has not yet been concluded, but that the parties believed that an additional three weeks would be adequate time to complete management review. Dkt. No. 27. Pursuant to the parties' stipulation, the Court continued the summary judgment briefing schedule and hearing and set the following schedule (Dkt. No. 28):

<u>Deadline</u>	<u>Due Date</u>
Plaintiff's Motion for Summary Judgment	October 9, 2020
EPA's Combined Opposition to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment	November 6, 2020
Plaintiff's Combined Reply in Support of Plaintiff's Motion for Summary Judgment and Opposition to EPA's Cross-Motion for Summary Judgment	December 4, 2020
EPA's Reply in Support of EPA's Cross-Motion for Summary Judgment	December 18, 2020

DeadlineDue Date

Hearing

Friday, January 8, 2021
9:00 am

3. The parties further stated that if the proposed consent decree was approved by the appropriate officials at EPA and DOJ, that the parties would advise the Court and request a further continuance to allow time for compliance with the requirements of CAA section 113(g), 42 U.S.C. § 7413(g).

4. The proposed consent decree has been approved and pursuant to CAA section 113(g), EPA has transmitted notice of the proposed consent decree to the Office of the Federal Register for publication in the *Federal Register*. Counsel has been advised that publication is expected on October 13, 2020.

5. After a reasonable public comment period, the EPA Administrator and the Attorney General, as appropriate, will promptly consider any written comments received. 42 U.S.C. § 7413(g). If the federal government elects not to withdraw or withhold consent to the proposed Consent Decree, EPA will promptly file a motion requesting that the Court enter the Consent Decree. EPA anticipates that compliance with the CAA section 113(g) notice and comment process will be completed within approximately 90 days.

Accordingly, the parties stipulate to and request that the Court and enter an order continuing the summary judgment briefing schedule and hearing for approximately 90 days to allow the CAA section 113(g) notice and comment process to conclude:

DeadlineDue Date

Plaintiff's Motion for Summary Judgment

January 7, 2021

EPA's Combined Opposition to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment

February 4, 2021

Plaintiff's Combined Reply in Support of Plaintiff's Motion for Summary Judgment and Opposition to EPA's Cross-Motion for Summary Judgment

March 4, 2021

EPA's Reply in Support of EPA's Cross-
Motion for Summary Judgment

March 25, 2021

Hearing

Friday, April 16, 2021
9:00 am

Respectfully submitted,

Date: October 8, 2020

/s Stuart Wilcox (email auth. 10/8/20)

Stuart Wilcox (State Bar No. 327726)
Christopher Sproul (State Bar No. 126398)
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1 Date: October 8, 2020

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3 /s Leslie M. Hill

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[PROPOSED] ORDER

Pursuant to stipulation and for good cause shown, the briefing schedule and hearing on the parties' cross-motions for summary judgment is continued as follows:

<u>Deadline</u>	<u>Due Date</u>
Plaintiff's Motion for Summary Judgment	January 7, 2021
EPA's Combined Opposition to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment	February 4, 2021
Plaintiff's Combined Reply in Support of Plaintiff's Motion for Summary Judgment and Opposition to EPA's Cross-Motion for Summary Judgment	March 4, 2021
EPA's Reply in Support of EPA's Cross-Motion for Summary Judgment	March 25, 2021
Hearing	Friday, April 16, 2021 9:00 am

IT IS SO ORDERED.

Dated:

JEFFREY S. WHITE
United States District Judge